

JUN 16 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

MICHAEL LYNCH, an individual,

Plaintiff - Appellant,

v.

TRENDWEST RESORTS, INC.,

Defendant - Appellee.

No. 04-35467

D.C. No. CV-00-00329-MJP

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Argued and Submitted June 9, 2006
Seattle, Washington

Before: BEEZER, TALLMAN, and BYBEE, Circuit Judges.

Appellant Michael Lynch appeals the district court's denial of his motion for relief from judgment and a new trial under Federal Rules of Civil Procedure 60(b)(2), (3) and (6), as well as the district court's denial of his motion for

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

reconsideration. We have jurisdiction under 28 U.S.C. § 1291 and we affirm. The parties are familiar with the facts and procedural history.

The district court did not abuse its discretion in denying the Rule 60(b)(3) motion when it found that the additional evidence proffered was insufficient to reopen the judgment. The law of the case governs the indirect damages claim and we see no reason to disturb it. *See Lynch v. Trendwest Resorts, Inc.*, 64 Fed. Appx. 44 (9th Cir. 2003).

The claims under Rules 60(b)(2) and (6) were waived because they were not argued in the opening brief.

Each party shall bear its own costs on appeal.

AFFIRMED.